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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-second session, 20–24 August 2018

Opinion No. 41/2018 concerning Juan Pedro Lares Rangel (Bolivarian Republic of Venezuela)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 16 April 2018, the Working Group transmitted to the Government of the Bolivarian Republic of Venezuela a communication concerning Juan Pedro Lares Rangel. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation,

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disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Juan Pedro Lares Rangel, a Venezuelan and Colombian national born in 1994, is a trader and student habitually resident in the parish of Matriz in the municipality of Campo Elías, Mérida in the Bolivarian Republic of Venezuela. He is the son of the former mayor of the municipality of Campo Elías, a member of the Voluntad Popular (Will of the People) (VP) party and opponent of the national Government who was elected as a representative of the Mesa de la Unidad Democrática (Democratic Unity Round Table) (MUD) coalition and is currently in exile in Colombia.

5. According to the information received, on the afternoon of 30 July 2017, around 200 armed officers of the Bolivarian National Guard, the Bolivarian National Police Force and the Bolivarian National Intelligence Service arrived at the family home of Mr. Lares Rangel without a warrant and began shooting at the front door with the intention of entering and arresting his father, who was the mayor of the municipality at the time.

6. The source reports that the family of Mr. Lares Rangel managed to escape from the back of the house and over their neighbours' roofs. However, Mr. Lares Rangel stayed behind and was arrested, even though the officers had no arrest warrant and had not caught him in flagrante delicto. He was forced to come down with his hands up. He was beaten with a pistol by men who identified themselves as members of the Bolivarian National Intelligence Service, who took him briefly to unit 16 of the Bolivarian National Guard, then to a head office of the Bolivarian National Intelligence Service. There, he was allegedly subjected to physical and psychological ill-treatment, then forced to pose alongside weapons, mortars and a police shield while being photographed. The source claims that Mr. Lares Rangel was taken hostage in order to pressure his father to turn himself in.

7. On 1 August 2017, the family of Mr. Lares Rangel filed a complaint for abduction and violation of fundamental rights with Prosecutor's Office No. 13 and the Public Defender Service of the State of Mérida. A second complaint regarding the violation of the fundamental rights of Mr. Lares Rangel was filed with Prosecutor's Office No. 81 of Caracas on 2 August 2017. It is reported, however, that no response to those complaints has been received.

8. The source notes that, after 48 hours in detention, Mr. Lares Rangel had not been brought before a court as required by Venezuelan law. At the time when the case was submitted to the Working Group, Mr. Lares Rangel had still not been brought before a court.

9. In the week after the arrest, the family of Mr. Lares Rangel received unofficial information that he was being held in El Helicoide prison in Caracas. That information was received not from the police, the prosecution service or official sources but from the mother of another young person who was being detained in the same place. The family of Mr. Lares Rangel went to El Helicoide prison several times to ascertain whether he was being held there, without success.

10. The source reports that, on 15 August 2017, thanks to the intervention of the Embassy of Colombia in Caracas, the family of Mr. Lares Rangel was able to enter El Helicoide prison for the first time to participate in a consular visit. It is reported that Mr. Lares Rangel was found there in a delicate state of health, having lost weight and colour, and that he begged his visitors, trembling, to remove him from there, on account of the ill-treatment that he had suffered at the hands of the officers of the Bolivarian National Intelligence Service. On 26 September 2017, Mr. Lares Rangel received a second consular visit at El Helicoide prison, during which members of his family were able to see him.

11. On 28 September 2017, the family of Mr. Lares Rangel filed a complaint against his detention with the prosecution service. A lawyer from a non-governmental human rights organization in Venezuela later told the family that the Attorney General of the Republic

had contacted her to inform her that the case had allegedly been assigned to a judge, who had requested information from the Bolivarian National Intelligence Service but had received no response.

12. On 1 October 2017, the family of Mr. Lares Rangel submitted a request for precautionary measures to the Inter-American Commission on Human Rights (IACHR).

13. On 18 October 2017, the family of Mr. Lares Rangel contacted Prosecutor's Office No. 13 of the State of Mérida again in order to request copies of the case file and to submit copies of the complaints filed with other institutions. They received no response to their request.

14. On 31 October 2017, during a third consular visit, members of Mr. Lares Rangel's family saw that his state of health had deteriorated even further, he had lost a significant amount of weight and he had had various health problems, including stomach problems, allergies, influenza, complications after an insect bite and scabies. It is reported that his psychological and emotional state had also been quite badly affected.

15. On 22 November 2017, the family of Mr. Lares Rangel was informed by the Ministry of Foreign Affairs of Colombia that it had sent three notes verbales regarding the situation of Mr. Lares Rangel to the Ministry of Foreign Affairs of Venezuela, via the Embassy of Colombia in Caracas. However, it had received no response to those notes verbales.

16. The source reports that the Venezuelan authorities have not officially recognized the detention of Mr. Lares Rangel; his name does not appear on any list of prisoners in El Helicoide prison and he has not been brought before any judicial authority. The source notes that "his situation makes him vulnerable to forced disappearance, torture and other cruel, inhuman or degrading treatment, and the continuing violation of his fundamental rights".

17. The source reports that Mr. Lares Rangel is being held in a cell with about 20 people and that he cannot communicate with his family, make telephone calls or receive visits. Moreover, he is not allowed to go outside in the fresh air and the sun, the sanitary conditions in his cell are poor and his access to water is limited.

18. The source claims that the deprivation of liberty of Mr. Lares Rangel has no legal basis and is therefore arbitrary under category I. It notes that there was no legitimate reason for his arrest, since he had not committed any offence, the arrest was not justified by a warrant or any other type of legal instrument and he was not caught in flagrante delicto. He was deprived of his liberty after State forces raided his home in search of his father; they were unable to arrest his father and therefore detained Mr. Lares Rangel in order to create pressure. The source emphasizes that the authorities have not brought him before a court to be formally charged, they have not recognized his detention officially and they have not included him on any list of detainees. The source argues that the actions of the authorities in this case constitute a violation of article 44 of the Venezuelan Constitution, which establishes the right to personal liberty as an inviolable right.

19. The source also notes that this case involves a violation of the right to due process, which is enshrined in article 49 of the Venezuelan Constitution, and that the detention of Mr. Lares Rangel is therefore arbitrary under category III. This is due to the fact that he has not been brought before a judicial authority in order to establish the legal basis for his detention, as should have happened within 48 hours of his arrest. Moreover, the authorities have failed in their duty to explain the reasons for his arrest and continued detention. The source also alleges that the principle of the presumption of innocence and the right to challenge the legality of the detention before a court have been violated.

Discussion

20. The Working Group is mandated to investigate all cases of deprivation of liberty imposed arbitrarily that are brought to its attention. In the discharge of its mandate, it refers to the relevant international standards set forth in the Universal Declaration of Human Rights and the Covenant, as well as to other relevant international legal instruments, in accordance with its methods of work.

21. The Working Group has, in its jurisprudence, established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

22. The Working Group has been informed that Mr. Lares Rangel was released from prison on 1 June 2018. However, in accordance with paragraph 17 (a) of its methods of work, the Working Group has decided to deal with the communication through its regular procedure and to issue the present opinion.

23. According to convincing information that was submitted to the Working Group by the source and has not been contradicted by the Government, Mr. Lares Rangel is the son of the former mayor of the municipality of Campo Elías who was elected in 2013 and is a member of the Voluntad Popular party and an opponent of the national Government.

24. The Working Group was convinced by the claim that, on 30 July 2017, officers of the Bolivarian National Guard, the Bolivarian National Police Force and the Bolivarian National Intelligence Service forced their way into his house to arrest his father, who managed to escape. That day, Mr. Lares Rangel was violently arrested, without an arrest warrant and without having been caught in flagrante delicto. He was subsequently transferred to a facility belonging to the Bolivarian National Intelligence Service. One week later, he was transferred to El Helicoide prison, where he was deprived of his liberty. Mr. Lares Rangel has not been informed of the reasons for his detention or formally charged with any offence.

25. In the light of the above, the Working Group considers that Mr. Lares Rangel was deprived of his liberty arbitrarily under category I, since the Government has been unable to invoke any legal grounds that would justify his detention.

26. The Working Group also received credible allegations that Mr. Lares Rangel's right to due process was seriously violated, as he was not able to seek immediate clarification of his legal status before a judicial authority. Moreover, he was not informed of the reasons for his detention and he was not allowed to challenge the legality of his detention before a court. Consequently, the Working Group considers that the detention of Mr. Lares Rangel was arbitrary under category III, owing to the grave violations of his rights under articles 9–11 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant.

27. The Working Group is of the view that the detentions described in the present case are not the first to be carried out by the authorities of the Bolivarian Republic of Venezuela against political opponents, human rights defenders and persons who criticize the authorities' actions. The Working Group has observed that there is a systematic practice of depriving people of their liberty in a manner that violates the fundamental rules of international law enshrined in the Universal Declaration of Human Rights and the Covenant.

28. In view of the above, the detention of Mr. Lares Rangel constituted a violation of international law because it was based on discrimination on the grounds of his political opinion and his membership of Voluntad Popular, an opposition party. Moreover, according to information submitted by the source that has not been refuted by the Government, the authorities were initially going to arrest his father, who was the local mayor for the same party; this is an aggravating factor with respect to the detention of Mr. Lares Rangel. Consequently, the Working Group considers that the detention of Mr. Lares Rangel by the authorities of the Bolivarian Republic of Venezuela contravenes articles 2 and 26 of the Covenant and articles 1 and 7 of the Universal Declaration of Human Rights and thus constitutes arbitrary detention under category V.

29. The Working Group wishes to recall that, under certain circumstances, imprisonment and other severe forms of deprivation of liberty in violation of internationally recognized standards may constitute crimes against humanity.[1]

30. In recent years, the Working Group has repeatedly expressed its views on multiple arbitrary arrests of political opponents of the Government and individuals who have exercised their rights to freedom of opinion, expression, association, assembly or political participation.[2] In the Working Group's view, this is an attack by the Government on its political opponents or part of a systematic attempt to deprive them, particularly those who are seen as opponents of the regime, of their physical freedom, in violation of fundamental rules of international law, including the Universal Declaration of Human Rights and the Covenant.

31. In the light of the recurrent pattern of arbitrary detention identified by this international human rights mechanism in recent years, the Government is urged to consider inviting the Working Group to make an official country visit. Such visits are an opportunity for the Working Group to engage in direct constructive dialogue with the Government and representatives of civil society, with the aim of better understanding the situation of deprivation of liberty in the country and the underlying reasons for arbitrary detention.

32. Lastly, in view of the source's allegations concerning the torture and cruel, inhuman or degrading treatment that may have been suffered by Mr. Lares Rangel during his arrest and detention and the dire conditions of detention (in terms of food, overcrowding and sanitation), the Working Group refers the present case, for information and possible action, to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

Disposition

33. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Juan Pedro Lares Rangel, being in contravention of articles 1, 7, 9–11 and 19–21 of the Universal Declaration of Human Rights and of articles 2, 9, 14, 19, 21, 22, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

34. The Working Group requests the Government of the Bolivarian Republic of Venezuela to take the steps necessary to remedy the situation of Mr. Lares Rangel without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the Covenant.

35. The Working Group considers that, taking into account all the circumstances of the case and in accordance with international law, victims of arbitrary detention have the right to seek and receive reparation from the State, including restitution, compensation,

[1] Opinions Nos. 37/2011, para. 15; 38/2011, para. 16; 39/2011, para. 17; 4/2012, para. 26; 47/2012, paras. 19 and 22; 34/2013, paras. 31, 33 and 35; 35/2013, paras. 33, 35 and 37; 36/2013, paras. 32, 34 and 36; 38/2012, para. 33; 48/2013, para. 14; 22/2014, para. 25; 27/2014, para. 32; 34/2014, para. 34; 35/2014, para. 19; 44/2016, para. 37; 32/2017, para. 40; 33/2017, para. 102; and 36/2017, para. 110.

[2] Opinions Nos. 52/2017 (Gilbert Alexander Caro Alfonzo), 37/2017 (Braulio Jatar), 18/2017 (Yon Alexander Goicoechea Lara), 27/2015 (Antonio José Ledezma Diaz), 26/2015 (Gerardo Ernesto Carrero Delgado, Gerardo Rafael Resplandor Veracierta, Nixon Alfonzo Leal Toro, Carlos Perez and Renzo David Prieto Ramirez), 7/2015 (Rosmit Mantilla), 1/2015 (Vincenzo Scarano Spisso), 51/2014 (Maikel Giovanni Rondon Romero and 316 others), 26/2014 (Leopoldo Lopez), 29/2014 (Juan Carlos Nieto Quintero), 30/2014 (Daniel Omar Ceballos Morales), 47/2013 (Antonio José Rivero González), 56/2012 (Cesar Daniel Camejo Blanco), 28/2012 (Raul Leonardo Linares), 62/2011 (Sabino Romero Izarra), 65/2011 (Hernan José Sifontes Tovar, Ernesto Enrique Rangel Aguilera and Juan Carlos Carvallo Villegas), 27/2011 (Marcos Michel Siervo Sabarsky), 28/2011 (Miguel Eduardo Osio Zamora), 31/2010 (Santiago Giraldo Florez, Luis Carlos Cossio, Cruz Elba Giraldo Florez, Isabel Giraldo Celedón, Secundino Andres Cadavid, Dimas Oreyanos Lizcano and Omar Alexander Rey Perez), and 10/2009 (Eligio Cedeño).

rehabilitation, satisfaction and guarantees of non-repetition. The Working Group therefore requests the Government to make appropriate reparation to Mr. Lares Rangel.

36. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary detention of Mr. Lares Rangel and to take appropriate measures against those responsible for the violation of his rights, including by ensuring impartial and independent follow-up to the complaints that were submitted to the prosecution service in August and September 2017 regarding the offences of abduction, violation of fundamental rights and deprivation of liberty committed against Mr. Lares Rangel.

37. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, for information and possible action.

38. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

39. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether compensation or other reparations have been made to Mr. Lares Rangel;

(b) Whether an investigation has been conducted into the violation of Mr. Lares Rangel's rights and, if so, the outcome of the investigation;

(c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Bolivarian Republic of Venezuela with its international obligations in line with the present opinion;

(d) Whether the present opinion has been publicized and widely disseminated through all available means;

(e) Whether any other action has been taken to implement the present opinion.

40. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

41. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

42. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[1]

[*Adopted on 20 August 2018*]

[1] See Human Rights Council resolution 33/30, paras. 3 and 7.